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Hung Parliament and Minority Government Formation in Westminster Parliamentary System (selected aspects)

Keywords: hung parliament, Westminster, minority cabinet, government, majority, political party, Cabinet Manual

Słowa kluczowe: zawieszony parlament, Westminster, gabinet mniejszościowy, rząd, większość, partia polityczna, Instrukcja dotycząca funkcjonowania rządu.

Summary

The article is devoted to the characteristics of the 'hung parliament' in the Westminster System and its influence on government formation. Some interesting aspects has been chosen to illustrate the problem of minority government existence in Great Britain. Author explains normative and non-normative systemic factors that influenced the formation of the government cabinets without a sufficient majority in the parliament. The main thesis is that creation of minority governments is closely associated with the evolution of the party system and can be a kind of political barometer that predict or confirm appropriate changes at the party scene.

Streszczenie

Parlament zawieszony a tworzenie się rządu mniejszościowego w systemie westminsterskim (wybrane aspekty)

Artykuł poświęcony jest charakterystyce "zawieszonego parlamentu" w systemie westminsterskim i jego wpływu na tworzenie rządu. Kilka ciekawych aspektów zostało wy-

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branych celem zilustrowania problemu istnienia rządu mniejszościowego w Wielkiej Brytanii. Autor wyjaśnia, normatywne i nienormatywne czynniki systemowe, które wpłynęły na tworzenie gabinetów rządowych bez wystarczającej większości w parlamencie. Główną tezą jest, że tworzenie rządów mniejszościowych jest ściśle związane z rozwojem systemu partyjnego i może być rodzajem barometru politycznego, dzięki któremu przewiduje się lub potwierdza odpowiednie zmiany na scenie partyjnej.



I.

A crucial aspect of the British system of government is that the government of the day must enjoy the confidence of the House of Commons. General elections are held to return MPs to the House of Commons. Most commonly, one party has a majority of seats, and this party forms a government. However, on a number of occasions over the last century, a general election has produced a result in which no party has a majority of Members: a situation of no overall control. This is known as a 'hung Parliament' although some prefer the expressions 'balanced parliament', 'minority parliament' or 'No Overall Control' (NOC)². In such circumstances, there are four likely outcomes. These have been set out by Paul Norton as follows³:

- a minority government;
- a coalition;
- a failure to produce a government at all;
- two or more of these things during the lifetime of a parliament.

Although hung parliaments are common in other parliamentary democracies, they are relatively rare in the Westminster Parliament, where the First Past the Post electoral system usually rewards the party with the most votes with a majority of seats. In fact, Westminster has experienced a hung parlia-

² The term hung parliament derives from the American term 'hung jury' and was imported into British political discourse in the 1970s.

³ P. Norton, *The Perils of a Hung Parliament*, [in:] *No Overall Control? The Impact of a 'Hung Parliament' on British Politics*, eds. A. Brazier, S. Kalitowski, Hansard Society 2008, p. 109.

ment in 2010, and there were only five others in the 20th century, following the general elections of January 1910, December 1910, December 1923, May 1929 and February 1974. There were also two instances where the government lost its majority in the Commons between general elections, in April 1977 and February 1997. These situations of no overall control resulted from parties losing seats over the course of a Parliament, through by-elections and defections. When a general election is called, the government at the time remains in office over the general election period. If the governing party is returned, they stay in office and when the situation is completely vice-versa they must resign. The monarch would then ask the leader of the party which can command control of the House of Commons to form a new government. However, if no party commands a majority, the previous government might remain in position and there might be a period of negotiation whilst they try to build a coalition, or else decide to try to govern with a minority of Members of Parliament. The United Kingdom is quite unusual in modern democracies in having no written constitution, that is, no single document comprising the rules of constitutional practice. In the UK the fundamental rules of constitutional practice are enshrined in various acts of Parliament, in the common law, in judicial decisions, in parliamentary law and customs, and in constitutional conventions. As these change and develop in part in reaction to circumstances and events it could be said that the “unwritten” constitution is constantly evolving and adapting itself. It is these conventions and precedents which inform what happens when a situation of no overall control of Parliament develops⁴.

It is important to remember that Westminster, so-called ‘mother of parliaments’, has had to suffer the parent’s fate of witnessing her offspring grow up, reject many of her old-fashioned ways, and strike out in directions she herself finds too bold and frightening⁵. One notable example is the extent to which single party majority government has remained the norm at Westminster, unlike in almost all continental European legislatures and, increasingly, the more

⁴ L. Maer, *Hung Parliaments*, House of Commons Library 2010, p. 3, (information provided to Members of Parliament on the basis of Standard Note SN/PC/04951).

⁵ A. Paun, *Introduction*, [in:] *Making Minority Government Work. Hung Parliaments and the Challenges for Westminster and Whitehall*, eds. R. Hazell, A. Paun, Institute for Government, London 2010, p. 10.

closely-related Commonwealth parliaments too. As a result of the 'first past the post' electoral system and the dominance of a two (or two and a half)⁶ national party system, every election in the postwar era bar one has returned a majority for either Labour (8 times) or the Conservatives (9 times), with the size of the majority ranging from 3 to 179 (see Table 1 presented below).

Table 1. Share of seats won by governing party since 1945

	1945	1950	1951	1955	1959	1964	1966	1970	Feb. 1974	Oct. 1974
Labour	+146	+5				+4	+96		-33	+3
Conservative			+17	+54	+100			+31		
	1979	1983	1987	1992	1997	2001	2005	2010	2015	
Labour					+179	+167	+61			
Conservative	+43	+144	+102	+21				-20	+6	

Source: Own work based on UK Election Statistics at: <http://www.electoralcommission.org.uk> (30.08.2015).

As Arend Lijphart claims the frequency of single-party majorities has helped create a political culture where elections are portrayed as winner-takes-all battles between two great political tribes. In academic discourse, the electoral system, as well as constitutional features such as weak local government and the doctrine of parliamentary sovereignty, has led the UK to be characterized as a strongly majoritarian system, in contradistinction to the 'consensual' democracies to be found in other parts of Europe⁷. The spectre that haunts the Westminster model is an inconclusive election, in which no one party wins an overall majority. As noted, only few elections in nearly four decades has returned a 'parliament of minorities', although Jim Callaghan in 1976 and John Major in 1996 both saw their majorities wiped out by by-election defeats and defections. Casting further back into history, however, reveals that Westminster does in fact have significant ex-

⁶ J. Blondel, *Party Systems and Patterns of Government in Western Democracies*, "Canadian Journal of Political Science" 1968, vol. 1, no. 2.

⁷ The fundamental book with a deep analysis A. Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, New Haven: Yale University Press, 1999.

perience of minority and coalition government. The general elections in May 2010 confirmed such situation and also some predictions before elections in 2015 were also suggesting the problem of hung parliament, however the results haven't confirmed it. Additionally, the growing popularity of 'minor' parties and independent candidates in recent years leaves a significant grey area on the swingometer between Labour and Conservative majorities.

II.

During last several years at regular intervals, political polls have predicted that a hung parliament in Great Britain is a highly possible – even likely – scenario following the next general election. Since the autumn of 2006, a hung parliament has been regularly predicted every few months in the polls. The likelihood of a hung parliament has increased for two reasons – firstly, because of the growth of third parties and secondly, because of the changes in the way that the electoral system translates popular votes into seats in the Commons. The way in which the First Past the Post system exaggerates a majority in votes into a much larger majority in seats has long been described in terms of a 'cube law': If votes are divided A:B, seats will be divided $A^3:B^3$. The cube law suggests that, in a 600-member parliament, for every 1% swing between the parties, 18 seats will switch to the winning side. The cube law worked remarkably well from 1931 to 1970. But it then emerged as a statistical coincidence rather than an iron law. The exaggeration dropped from 18 seats switching for each 1% swing down to 12 or fewer. The cube law had in fact become a square law. If the cube law had still worked in 1983, Margaret Thatcher's clear majority would have been 250, not 142 and Tony Blair's lead in 1997 would have been 229, not 179. Landslides are smaller than they used to be and narrow majorities have become narrower. Defenders of First Past the Post with its exaggerated majorities used to claim that at least the system treated the two big parties fairly: it produced roughly the same winner's bonus whichever side won. But in the 1990s the system moved out of kilter. Labour stood to win more seats than the Conservatives for any given percentage of the vote⁸.

⁸ D. Butler, *Hung Parliaments: Context and Background*, [in:] *No Overall Control?*, op.cit., pp. 8–9. See also an article in a monograph of scientific project financed by National Scien-

III.

According to David Butler problems with collecting clear majority in parliament will always lead to minority government or coalition government, which are not really expected in the tradition of British political thought⁹.

It is believed that minority governments have survived on different kinds of understanding. For example from 1910 to 1914 the issue of Home Rule made the 80 Irish Nationalists eager to keep the Liberals in office. In 1924 the Liberals thought it expedient to give the first Labour government a chance and they were dismayed when, after nine months, Ramsey Macdonald opted for a general election because the Liberals had voted against him over his refusal to hold an inquiry into the Campbell case. In 1929 they again gave Labour mistrustful support in return for a promise of electoral reform. Between 1945 and 1974, the electorate returned majority governments. On a few occasions, these majorities were small, but in no instance was a coalition formed. In 1950–1951 Labour governed with a majority of 5. In 1950, no attempt was made by the government to gain Liberal support during the 18 months of that administration. When the Conservatives won the election of 1951 with an overall majority of 17, Winston Churchill offered a Cabinet post to the leader of the Liberals (Clement Davies) who did not accept. In 1964–1966 Labour held office with a majority of four and no positive approaches were made to the Liberals. Another general election was held after 18 months. In February 1974, the incumbent Conservative government lost its majority. Edward Heath remained as Prime Minister for a few days while instead of resigning immediately he tried to form a coalition with Liberals under leadership of Jeremy Thorpe and with the Ulster Unionists under leadership of Harry West. This would have been sufficient to give him an overall majority. Unsuccessful negotiations lead to the change of government. Heath was replaced as Prime Minister by Harold Wilson. Wilson then governed for six months with a minority government. As many research-

ce Center (Poland) M. Domagała, *Bias, czyli deformacje brytyjskiego system wyborczego*, [in:] *Wpływ deformacji wyborczych na systemy polityczne*, ed. J. Iwanek, Toruń 2014.

⁹ For example British Prime Minister Benjamin Disraeli once said: 'England does not love coalitions'. See B. Disraeli, *House of Commons Hansard*, 16 December 1852, col. 1666, at: <http://tinyurl.com/disraeli-coalition> (10.10.2015).

ers claim Labour were able to survive these months as a minority government quite easily because of the willingness of Conservatives to abstain on key votes – for they did not wish to precipitate an immediate second election in the wake of their earlier defeat¹⁰. In March 1974 Harold Wilson offered no understandings but gambled on winning an election if it were forced on him. The general election of October 1974 resulted in an overall majority for Labour of 3, but a majority over the Conservatives of 42. Labour formed a government. However, by 1977–1978 the Labour government had to systematically draw on the support of the Liberals¹¹. After 1976 when Labour's new majority had evaporated, Jim Callaghan negotiated with the Liberals and in 1977–1978 entered into the formal Lib-Lab pact. In February 1997 John Major found that by-elections and floor-crossings had whittled his majority of 20 down to minus one; however, a general election was imminent and the loss of his current majority was the least of his problems¹².

For many years since the 19th century coalition governments have never been planned in a premeditated fashion. For significant parts of the first half of the twentieth century, there were coalition administrations. However, these twentieth century coalitions only occurred at times of war, economic crisis, or as a prelude to mergers between political parties. For example, between 1931 and 1940 a national government, led at various points by MacDonald (1931–1935), Baldwin (1935–1937) and Chamberlain (1937–1940) included National Labour, Conservatives, Liberal Nationals, and until 1932, the Liberals. In 1940, a wartime government of national unity was formed under Churchill which included Conservatives, Labour and Liberals, lasting until 1945. A wartime government of national unity had also been established during the First World War, which continued until 1922. No formal coalition governed from Westminster between 1945 and 2010¹³. However, in the October 1974 election Edward Heath put forward the idea of a govern-

¹⁰ V. Bogdanor, *A Hung Parliament: a Political Problem Not a Constitutional One*, [in:] *No Overall Control?*, op.cit., pp. 17–18. See also J. Curtice, *Dilemmas of a Hung Parliament*, March 1992, p. 9.

¹¹ L. Maer, *Hung Parliaments...*, p. 8.

¹² D. Butler, *Hung Parliaments...*, pp. 10–11.

¹³ L. Maer, *Hung Parliaments in the Twentieth Century*, House of Commons, Briefing Paper no. 04951, 8 May 2015, p. 14.

ment of national unity and in 1997 Tony Blair, not foreseeing his landslide victory, certainly contemplated a coalition with the Liberal Democrats. But the most serious example of such governing model was experienced in year 2010–2015. The Conservative Party, led by David Cameron, won the largest number of votes and seats but still fell twenty seats short. This resulted in a hung parliament second time since World War II. Such untypical situation of hung parliament had this time been widely considered and predicted and both the country and politicians were better prepared for the constitutional process that would follow such a result. Coalition talks began immediately between the Conservatives and the Liberal Democrats and lasted for five days. There was an aborted attempt to put together a Labour/Liberal Democrat coalition (although other smaller parties would have been required to make up the ten seats they lacked for a majority). To facilitate this Gordon Brown announced on the evening of Monday 10 May that he would resign as Labour Party leader. Realising that a deal with the Conservatives was in reach, the next day on Tuesday 11 May, Brown announced his resignation as Prime Minister, marking the end of 13 years of Labour government. This was accepted by Queen Elizabeth II, who then invited David Cameron to form a government in her name and become Prime Minister. Just after midnight on 12 May, the Liberal Democrats emerged from a meeting of their Parliamentary party and Federal Executive to announce that the coalition deal had been ‘approved overwhelmingly’, sealing a coalition government of Conservatives and Liberal Democrats¹⁴.

IV.

According to Vernon Bogdanor a hung parliament or even a succession of hung parliaments need not always lead to a constitutional crisis. A hung parliament may instead lead to a political crisis, but that is something for the political leaders, not the sovereign, to resolve. A hung parliament merely makes transparent the fundamental principle of parliamentary government, a prin-

¹⁴ http://news.bbc.co.uk/2/hi/uk_news/politics/election_2010/8675913.stm (30.08.2015), http://news.bbc.co.uk/2/hi/uk_news/politics/election_2010/8676539.stm (30.08.2015).

ciple which has often been overt since 1866: a government depends upon the confidence of Parliament¹⁵. In such extraordinary situation it is important to clarify the constitutional regulations. The appointment of the Prime Minister and the granting of a dissolution of Parliament are both prerogative powers of the monarch. On the former, the Sovereign must appoint that person who is in the best position to receive the support of the majority in the House of Commons. On the latter, in the absence of a regular term for the life of Parliament fixed by statute, the Sovereign may by the prerogative dissolve Parliament and cause a general election to be held. However, in a situation of no overall control, these conventions may be put under some strain by the absence of a clear way forward¹⁶.

After last British hung parliament in 2010 elites decided to set the main laws, rules and conventions affecting the conduct and operation of the Government of the United Kingdom. They called them the 'Cabinet Manual'¹⁷, which is a government document written by Her Majesty's Civil Service, led by Cabinet Secretary Sir Gus O'Donnell¹⁸. It was published by the Cabinet Office in a rough version on 14 December 2010 and officially signed

¹⁵ V. Bogdanor, *A Hung Parliament...*, p. 25.

¹⁶ L. Maer, *Hung Parliaments...*, p. 15.

¹⁷ *The Cabinet Manual. A guide to laws, conventions and rules on the operation of government*, 1st Edition, October 2011, Cabinet Office, Whitehall, London 2011, <https://www.gov.uk/government/publications/cabinet-manual> (31.08.2015).

¹⁸ The wording and appearance of the document resembles that of a written constitution and the writing of the Manual was originally initiated by Prime Minister Gordon Brown as part of his broader plan to establish a written constitution for the UK. In February 2010 during his speech to the Institute for Public Policy Research, Prime Minister announced that he had asked Cabinet Secretary Sir Gus O'Donnell to 'consolidate the existing unwritten, piecemeal conventions that govern much of the way central government operates under our existing constitution into a single written document'. Sir Gus and his team in the Cabinet Office travelled to New Zealand, which uses the Westminster system of government and also lacks a codified constitution. Using the *New Zealand Cabinet Manual* as precedent, the Cabinet Office published a draft Cabinet Manual for the UK in December 2010 which was scrutinised by the House of Lords Constitution Committee, the House of Commons Political and Constitutional Reform Committee and the Public Administration Select Committee. However in 2011 the House of Lords Constitution Committee stated that the document was 'not the first step to a written constitution' as it only describes the existing rules and does not 'set existing practice in stone'. The Manual does not need to be formally approved by Parliament and can be modified at any time by the Cabinet Secretary. See: <http://www.publi>

in a finalised version by Prime Minister David Cameron in October 2011. The Manual gives an overview of the UK's system of government, reflecting the importance of Parliament, Cabinet government and the democratic nature of the UK's constitutional arrangements by explaining the powers of the Executive, Sovereign, Parliament, international institutions (most notably the European Union), the Crown Dependencies, British Overseas Territories and the devolved administrations in Northern Ireland, Scotland and Wales. The Manual was written as a guide for members of Cabinet, other ministers and civil servants in the execution of government business, but also serves to bring greater transparency about the mechanisms of government and consolidate many of the previously unwritten constitutional conventions through which the British government operates.

The initialising situation in the context of hung parliament is always connected with the fundamental principles of government formation. It ought to be remembered that the ability of a government to command the confidence of the elected House of Commons is central to its authority to govern. Prime Ministers hold office unless and until they resign. If the Prime Minister resigns on behalf of the Government, the Sovereign will invite another person¹⁹ who appears most likely to be able to command the confidence of the House to serve as Prime Minister and to form a government²⁰. For many years it was characteristic that the Sovereign has made use of reserve powers to dismiss a Prime Minister or to make a personal choice of successor, although this was last used in 1834 and was regarded as having undermined the Sovereign. Nowadays the convention has been that the Sovereign should not be drawn into party politics, and if there is doubt it is the responsibility of those involved in the political process, and in particular the parties represented in Parliament, to seek to determine and communicate clearly to the Sovereign who is best placed to be able to command the confidence of the House of Commons. As the Crown's principal adviser this responsi-

cations.parliament.uk/pa/ld201011/ldselect/ldconst/107/10703.htm (31.08.2015), <http://www.bbc.com/news/uk-politics-12669011> (31.08.2015).

¹⁹ In the twentieth century there were only several examples of Prime Ministers, who resigned and were asked to form a new administration (e.g. Ramsay MacDonald, Winston Churchill).

²⁰ See 2.7 & 2.8 *The Cabinet Manual...*, p. 14.

bility falls especially on the incumbent Prime Minister, who at the time of his or her resignation may also be asked by the Sovereign for a recommendation on who can best command the confidence of the House of Commons in his or her place²¹.

Most typical for Britain is the situation where after the election, if an incumbent government retains an overall majority – that is, where the number of seats won by the largest party in an election exceeds the combined number of seats for all the other parties in the new Parliament – it will normally continue in office and resume normal business. In this case it is quite obvious that there is no need for the Sovereign to ask the Prime Minister to continue. If the election results in an overall majority for a different party, the incumbent Prime Minister and government will immediately resign and the Sovereign will invite the leader of the party that has won the election to form a new government.

More complicated is the situation which results in parliament with no overall control in the House of Commons. Such extraordinary situation should be resolved in the following procedure. Firstly, the incumbent government remains in office unless and until the Prime Minister tenders his or her resignation and the Government's resignation to the Sovereign. An incumbent government is entitled to wait until the new Parliament has met to see if it can command the confidence of the House of Commons, but is expected to resign if it becomes clear that it is unlikely to be able to command that confidence and there is a clear alternative. Secondly, where a range of different administrations could potentially be formed, political parties may wish to hold discussions to establish who is best able to command the confidence of the House of Commons and should form the next government. The Sovereign would not expect to become involved in any negotiations, although there are responsibilities on those involved in the process to keep the Palace informed. This could be done by political parties or the Cabinet Secretary. The Principal Private Secretary to the Prime Minister may also have a role, for example, in communicating with the Palace. Thirdly, if the leaders of the political parties involved in any negotiations seek the support of the Civil Service, this support may only be organised by the Cabinet Secre-

²¹ See 2.9 *The Cabinet Manual...*, p. 14.

tary with the authorisation of the Prime Minister. If the Prime Minister authorises any support it would be focused and provided on an equal basis to all the parties involved, including the party that was currently in government. The Civil Service would continue to advise the incumbent government in the usual way²².

The nature of the government formed is usually dependent on discussions between political parties and any resulting agreement. Where there is no overall majority, there are essentially three broad types of government that could be formed²³:

- single-party, minority government, where the party may (although not necessarily) be supported by a series of ad hoc agreements based on common interests;
- formal inter-party agreement, for example the Liberal–Labour pact from 1977 to 1978;
- formal coalition government, which generally consists of ministers from more than one political party, and typically commands a majority in the House of Commons.

In the second chapter of 'Manual' the reader can find other useful additional information like for example changing procedures of Prime Minister or government during the parliament (2.18–2.20), pre-election contracts with opposition parties (2.21), dissolution of parliament (2.22–2.25) and restrictions on government activity (2.26–2.34). They contain plenty of detailed rules, but it is not possible to analyse them in one paper, so it is going to be omitted.

V.

What is crucial for a minority government maintaining in the political system, is the balance of power shifted to the critical party or parties that can determine the outcome in a parliamentary vote (so called veto players). Critics of the present electoral system argue that the system gives disproportionate power to the largest single party. A hung parliament has the same effect as

²² See 2.12& 2.13& 2.14 *The Cabinet Manual...*, pp. 14–15.

²³ See 2.17 *The Cabinet Manual...*, p. 15.

systems of proportional representation, transferring disproportionate power to the smallest or one of the smallest parties. Arguments about proportionality miss the point that 10% of the votes translated into 10% of the seats does not then translate into 10% of the negotiating power in the House of Commons; it translates into far more than that once one becomes a veto player²⁴.

Critics of hung parliaments in general argue that it will inherently result in weak and unstable government with ministers lacking the power and authority to deal with pressing economic, social and national security challenges. In contrast, its supporters argue that it will fundamentally alter the culture of politics in this country for the better, requiring a broader cross section of elected representatives to be included in the policy making process, providing greater transparency and restraining the authority of the executive whilst empowering the collective influence of parliament. There is also another positive factor of minority government as a result of hung parliament – responsibility of elites because minority government, encompassing and having consulted with a broad swath of representative opinion within the House of Commons, may provide a platform for the political leaders to take bolder decisions than might otherwise be the case not least because responsibility for those difficult decisions will be shared by more than one party and one political leader²⁵.

Political decisiveness is linked to a government's capacity to legislate and here too the precedents demonstrate that a hung Parliament can still be effective. In 1974, for example, the number of bills that became statute compared very favourably with the legislative outputs of prior and subsequent sessions, given that it was a year of two general elections²⁶. There is no reason why a minority government cannot pursue a broad legislative programme though it may need to be more persuasive and consensual in its approach to policy making than would otherwise be the case if it was governing in its own right.

²⁴ P. Norton, *The Perils of a Hung...*, p. 110.

²⁵ R. Blackburn, R. Fox, O. Gay, L. Maer, *Who Governs? Forming a Coalition or a Minority Government in the Event of a Hung Parliament*, Hansard Society & Study of Parliament Group 2010, p. 14.

²⁶ A. Brazier, *Parliamentary Procedure Without Commons Majority*, [in:] *No Overall Control?*, op.cit., p. 36.

Finally, the cultural impact of hung parliament should be remembered. It is believed that the greatest changes in parliamentary practice would be delivered as a result of a period of minority government rather than coalition. The coalition requires adherence to collective responsibility and would therefore require cohesive party unity in order to work. In contrast, minority government might enhance the power of backbenchers because individual MPs and interest groups are better placed to secure concessions²⁷.

In conclusion minority governments which may be the consequence of hung parliament in Westminster system should not always be criticised. With the coalition governments they both reflect the changes in the party system and transfer of electoral system deformations on political system. However Britain has experienced several times hung parliaments it does not mean the tendency to serious changes in the political system. It is also worth to notice that there was done an expected work in the constitutional system resulted in 'Cabinet Manual' a written document, which helps to regulate a delicate sphere between legislative and executive branch.

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